

NOV 25 2013

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**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

UNITED STATES OF AMERICA,

) CASE NO. 7:12CR00014

) (CASE NO. 7:12CV80629)

)

v.

) **MEMORANDUM OPINION**

)

)

RODOLFO NUNEZ PONCE,

) By: Glen E. Conrad

Defendant.

) Chief United States District Judge

)

Rodolfo Nunez Ponce, a federal inmate proceeding pro se, filed a letter for an extension of time to appeal (ECF No. 32),¹ which the court construed conditionally as a motion to vacate, set aside or correct the sentence under 28 U.S.C. § 2255. After review of the record, the court concludes that the conditionally filed § 2255 motion must be dismissed without prejudice, and Ponce's other pending motion must be denied.

On August 13, 2013, the court issued an order, notifying Ponce that the court had construed his letter/motion regarding appeal as a § 2255 motion and would treat it as such, absent his objection. Having received no response from Ponce, on September 4, 2013, the court entered an order advising Ponce that he had 10 days to submit an amended § 2255 motion signed under penalty of perjury and making a clear statement of his claim, including the facts in support of that claim. This order also advised Ponce that his claim appeared to be timely filed under § 2255(f), but that his failure to comply with the order by promptly submitting his properly sworn § 2255 motion and facts in support would result in the dismissal of the conditionally filed § 2255 action without prejudice.

¹ Because Ponce fails to demonstrate any ground on which this court could extend his time to file a notice of appeal, his letter/motion seeking such relief must be denied.

Instead of submitting a § 2255 form as directed, Ponce moved for an extension of 90 days in which to obtain counsel to assist him in preparing his § 2255 motion. Finding no good cause for such a lengthy delay, by order entered September 23, 2013, the court granted Ponce an additional 30 days to submit a completed § 2255 form. More than 30 days has elapsed with no further communication from Ponce. Based on Ponce's failure to comply with the court's order directing him to promptly submit a properly sworn § 2255 motion, the court concludes that the conditionally filed § 2255 motion must be dismissed without prejudice. An appropriate order will enter this day.

The Clerk is directed to send copies of this memorandum opinion and accompanying order to the defendant.

ENTER: This 25th day of November, 2013.



Chief United States District Judge